*		12 CV 05763
	ED STATES DISTRICT COURT HERN DISTRICT OF NEW YORK	(SHS)
Ras	shaad Donnell Guerrero	
(In the spa	pace above enter the full name(s) of the plaintiff(s).)	COMPLAINT
	-against-	
F.	ocal 32BJ Sein	Jury Trial: Yes No (check one)
		Amended
cannot fit please writ sheet of pa caption mu	pace above enter the full name(s) of the defendant(s). If you to the names of all of the defendants in the space provided, rite "see attached" in the space above and attach an additional paper with the full list of names. The names listed in the above that the full list of names in Part I. Addresses should cluded here.)	USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC# DATE FILED: 10 112 pl
I. Pa	Parties in this complaint:	
id	List your name, address and telephone number. If you address of your current and address of your current and additional plaintiffs named. Attach additional sheets	rent place of confinement. Do the same
Plaintiff	Name Rashaad Donnell Street Address   Metropolitan C County, City Bronx State & Zip Code NY 10462 Telephone Number 646-351-9	Guerrero Dval (Apt-11-F) 897
go de	List all defendants. You should state the full name of the covernment agency, an organization, a corporation, or an indefendant may be served. Make sure that the defendant(s) list in the above caption. Attach additional sheets of paper as no	lividual. Include the address where each ed below are identical to those contained

Defend	lant No. 1	Name FJC Security Services Ine; Street Address 33-10 Queens Bowlevard County, City Long Island City State & Zip Code NY 11101 Telephone Number 347-418-3800
Defend	lant No. 2	Name LOCAL 32BJ Seiu Street Address 25 West 18th Street County, City New York State & Zip Code NY 10011
		Telephone Number 212-388-2862
Defend	lant No. 3	Name Street Address County, City State & Zip Code Telephone Number
Defend	lant No. 4	Name Street Address County, City State & Zip Code Telephone Number
II.	Basis for Juris	
§ 1331, Under 2	ng a federal que, a case involvin 28 U.S.C. § 133 ages is more tha	ts of limited jurisdiction. Only two types of cases can be heard in federal court: cases estion and cases involving diversity of citizenship of the parties. Under 28 U.S.C. of the United States Constitution or federal laws or treaties is a federal question case. 22, a case in which a citizen of one state sues a citizen of another state and the amount in \$75,000 is a diversity of citizenship case.
	Federal Que	estions
В.	is at issue?	jurisdiction is Federal Question, what federal Constitutional, statutory or treaty right Labor Management Relations Act by 301, 185 (U.S. C. 29).
C.	Plaintiff(s) state	jurisdiction is Diversity of Citizenship, what is the state of citizenship of each party?  e(s) of citizenship  ate(s) of citizenship

III.	Statement	of	Claim	9
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State as briefly as possible the <u>facts</u> of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

C.	Facts: Local 32BJ, Sein handled my grievan
ed	Services, Inc; breached the C.B.A. contrace by terminating me without cause. Please
d	see notes and documents. Fed. R. Evid.
nyone d?	
se lat led?	
IV.	Injuries:

	On or about March 7, 2012. I had
	a meeting with the union representative
	of (32B) Seiu) to discuss the arbitration
	hearing on March 21,2012.
•.	

I gave Raul Garcia my state
supreme court complaint. I also told
Raul Garcia that my witnesses are
Roshel Greham, Charmelle Tate, and
Beverly Miller. I told Raul Garcia that
they will testify on my behalf. Raul
Garcia said that he would make sure
she appear at the hearing. When the
day came my witnesses never showed up.
on March 21, 2012. I told Raul Garcia that
It is important that my witnesses are
there to testify on my behalf, and with
their testimonies I will win.

V. Relief:
State what you want the Court to do for you and the amount of monetary compensation, if any, you are
seeking, and the basis for such compensation. Punitive damages, compensations damages, back and front pay, Seniority and
rein statement.
I declare under penalty of perjury that the foregoing is true and correct.
Signed this day of October, 2012-
Signature of Plaintiff Lahaal Jones Querrers
Mailing Address I Wetropolitan Oval
Bronx New York 10462
(Apt 11-F)
Telephone Number (646) - 351 - 9897
Fax Number (if you have one)
Note: All plaintiffs named in the caption of the complaint must date and sign the complaint. Prisoners must also provide their inmate numbers, present place of confinement, and address.
For Prisoners:
declare under penalty of perjury that on this day of, 20, I am delivering this complaint to prison authorities to be mailed to the <i>Pro Se</i> Office of the United States District Court for the Southern District of New York.
Signature of Plaintiff:
Inmate Number

COUNTY OF NEW YORK	E STATE OF NEW YORK
DONNELL GUERRERO	

Plaintiff.

INDEX NO. 11402238

-against-

COMPLAINT

NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, FJC SECURITY SERVICES INC.

Defendants	
	•

The complaint of the plaintiff, Donnell Guerrero, respectfully shows and alleges as follows:

- The Plaintiff herein, Donnell Guerrero, is a resident of the State of New York. Mr. Donnell Guerrero resides at 1 Metropolitan Oval Apt. 11-F, Bronx, N.Y. 10462.
- 2. The Defendant New York City Human Resources Administration known as HRA is located at 1 Centre Street, Room 1200, New York, N.Y. 10007 and Defendant FJC Security Services, Inc. is located at 275 Jericho Turnpike, Floral Park, N.Y. 11001.
- 3. Plaintiff Donnell Guerrero suffered emotionally and financially since June 22, 2011.
- 4. I filed a notice of claim with the New York City Office of the Comptroller located at 1 Centre Street, New York, N.Y. 10007.
- 5. I am suing defendants for wrongful termination and banning me from HRA city sites based on libelous and defamatory false allegations. I'm also suing for retaliation.
- 6. I complained to the U.S. EEOC and brought a lawsuit against defendants in the past for harassment in Federal Court. I was told by my employer that if I get one more infraction, I will be terminated. I was wrongfully terminated and reinstated in the past.
- 7. HRA Sergeant Wright told me that I was a loose cannon. Which means I am unstable. FJC

director told me that I was a liability. Her name is Laurie Malloy.

- 8. My employment began with FJC Security Services, Inc. on or about May of year 2006, as a Security Guard.
- 9. On June 13, 2011 at HRA located at 260 East 161<sup>st</sup> Street the Melrose Center a mentally and emotionally disturbed customer refused to follow HRA's rules and wait his turn in line.
- 10. HRA rules only allow customers with referrals to approach the HRA worker at the reception window without waiting in line as per HRA.
- 11. As I approached the customer in a professional and calm manner, I told him about HRA rules.

  The customer became hostile and confrontational.
- 12. This particular customer is alleged to have been recently released from prison. He is alleged to be a convicted felon. He also appeared to be mentally and emotionally disturbed based on his behavior.
- 13. The customer became threatening and aggressive. He invited me to go outside with him to fight. I refused, I called a distress code over the radio unit which is a 10-13. No HRA Police responded. I made several 10-13 calls over the radio-unit and no HRA Police responded.
- 14. The emotionally disturbed customer came towards me and he became a threat. Several of the customers who were present came to my aid. They tried to keep the disturbed customer from getting to me. One of the customers that tried to help me injured his hand as he intervened.
- 15. I realized that I had to defend myself because the disturbed customer was determined to physically harm me. I had to restrain him with minimum force. I never struck him with my fist or hurt him in anyway.
- 16. I was instructed by HRA staff to remove myself from the incident which I did. HRA Sergeant
  Chavis finally showed up. HRA supervisor Ms. Miller and Deputy Director of HRA Lopez serviced this

disturbed client. He was in the office for over 30 minutes.

- 17. The customer then left the office and went outside and got into an ambulance. He was not hurt and he left under his own power. HRA encouraged him to call for EMS to make the incident look more serious than it was.
- 18. HRA Ms. Miller, Sergeant Chavis made false allegations against me. HRA banned me from all their city sites which is a violation of my Civil and Human Rights. My employer FJC terminated my employment without an investigation and HRA never investigated the incident with me being present.
- 19. HRA Ms. Miller is a case worker and she is not familiar with the security operations. She gave my employer Laurie Malloy a director false information. I was banned and terminated on July 11, 2011.
- 20. By reason of the facts and circumstances stated above, the defendants violated my rights by wrongfully terminating my employment and banning me.
- 21. By reason of the facts and circumstances stated above, the plaintiff has been damaged by defendants in the sum of \$ 150,000.00. Plus interest, cost and disbursements together with any other relief the courts finds to be just and proper.

August 5, 2011

(sign)

(print)

1 Metropolitan Oval Apt. 11-F

Bronx, N.Y. 10462

646-351-9897

Commission Expires June 5, 20

lotary Public

SUPREME COURT OF THE STATE COUNTY OF NEW YORK	OF NEW YORK	
Donnell Guerrero		SUMMONS
[your name(s)]	Plaintiff(s)	Index Number
- against - New York City Human F	Zeonumo Admini	trition : 11402238
FJC Security Services		Date Index Number purchased
-		, 200
[name(s) of party being sued]	Defendant(s)	
To the Person(s) Named as Defenda	• •	
PLEASE TAKE NOTICE THAT	Γ YOU ARE HEREBY	SUMMONED to answer the complaint
of the plaintiff(s) herein and to serve	a copy of your answer	on the plaintiff(s) at the address
indicated below within 20 days after s	service of this Summo	ns (not counting the day of service
itself), or within 30 days after service	is complete if the Sur	nmons is not delivered personally to you
within the State of New York.	,	• • •
	THAT chould you fa	il to answer, a judgment will be entered
	·	• •
against you by default for the relief de	manded in the compl	aint.
- A		La O Chianani
Dated:, 200 [1		[sign your name]
[date of summons]		
EIL		nnell Guerrero
	Λλαο	[print your name]
NIA	1" 29M	Metropolitan Oval Bronx,
	The same of the sa	zw York 10462
COUNTY	NEW YORK	ot #'11-F 646-351-989
	[your	address(es), telephone number(s)]
Defendant(s) FJC Security	Samuel Ton 1	JYC Human Resources Administration
	services 4-nc: 1	
275 Jericho		Centre Street, Room 1200
	Turnpike, 1	
275 Jericho Floral Park, N	Turnpike, / JY11001 N	Centre Street, Room 1200 ew York, NY 10007
275 Jericho Floral Park, N	Turnpike, / 1 Y 11001 N address(es) of defenden	Centre Street, 1800m 1200 lew York, NY 10007
275 Jericho Floral Park, N [a Venue: Plaintiff(s) designate(s) New Y	Turnpike, / 1 Y 11001 N address(es) of defenden	Centre Street, Room 1200 lew York, NY 10007
Venue: Plaintiff(s) designate(s) New is: [check box that applies]	Turn pike / / I Y 11001 / W  address(es) of defendence of the place of	Centre Street, Room 1200 lew York, NY 10007
275 Jericho Floral Park, N [a Venue: Plaintiff(s) designate(s) New Y	Two pike / / I Y 11001 / /  address(es) of defendance  York County as the place  W York County	Centre Street, Room 1200 lew York, NY 10007 dant(s)]

	TTED STATES DISTRICT COURT $12$ CV $05765$
	Pashadd D. Guerrero
(In th	e space above enter the full name(s) of the plaintiff(s).)
	-against-
	JC Security Services Inc; Jury Trial: Wes 10 No
0C11L3	2 Bj Seiu
•	
	neceived
canno please sheet c captio	e space above enter the full name(s) of the defendant(s). If you fit the names of all of the defendants in the space provided, write "see attached" in the space above and attach an additional of paper with the full list of names. The names listed in the above in must be identical to those contained in Part I. Addresses should included here.)
I.	Parties in this complaint:
A.	List your name, address and telephone number. It you are presently in custody, include your identification number and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.
Plainti	JOSEPH OF CONTRACTOR
	Street Address   Wetvopolitan Oval
	State & Zip Code NY 10462 (Apt 11-F)
	Telephone Number 646-351-9897
B.	List all defendants. You should state the full name of the defendant, even if that defendant is a government agency, an organization, a corporation, or an individual. Include the address where each

defendant may be served. Make sure that the defendant(s) listed below are identical to those contained

in the above caption. Attach additional sheets of paper as necessary.

-		
Def	endant No. 1	Name FJC Security Services Inc;
	<b>v</b> 4	Street Address 3310 Queens Boulevard
		County, City Long Island City
		State & Zip Code NY
		Telephone Number 347 - 418 - 3800
		LOCAL
Def	endant No. 2	Name 32 BJ Seiu
		Street Address 25 West 18th Street
		County, City New York
		State & Zip Code NY (1001)
		Telephone Number 212-388-2062
		A Section of the Contract of t
Defe	endant No. 3	Name
		Street Address
		County, City
		State & Zip Code
		Telephone Number
Det	and No. 4	NY. T
Dele	endant No. 4	Name
		Street Address
·		County, City
		State & Zip Code
		Telephone Number
II.	Basis for Jur	isdiction:
§ 133 Unde	ving a federal qu 31, a case involvi er 28 U.S.C. § 13	arts of limited jurisdiction. Only two types of cases can be heard in federal court: cases destion and cases involving diversity of citizenship of the parties. Under 28 U.S.C. ing the United States Constitution or federal laws or treaties is a federal question case. 32, a case in which a citizen of one state sues a citizen of another state and the amount an \$75,000 is a diversity of citizenship case.
A.	What is the ba	sis for federal court jurisdiction? (check all that apply)
	Federal Qu	
B.	If the basis for	r jurisdiction is Federal Question, what federal Constitutional, statutory or treaty right
- ·	is at issue?	Section 301 of the Management Relations 19 USC 185) Section 14C (29 USC 164(c))
C.	If the basis for	jurisdiction is Diversity of Citizenship, what is the state of citizenship of each party?
	Defendant(s) state	tate(s) of citizenship
	-otomani(a) a	micles of chizenship

	Humphrey V. Moore, Supra; Ford Motor
	co. V. Huffman, Supra
	VACA ET AL Sipes
	Administrators; Owens V. Swift
	386 U.S. 171, 87 S. Ct, 903
	386 U.S, 171, 87 S. Ct, 903 17 L.ED 842, 1967 U.S Lexis 2873
and the state of t	

III.	Statement	of	Claim:
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State as briefly as possible the <u>facts</u> of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A 	Where did the events giving rise to your claim(s) occur? Melrose Job Center- East 1615t Bronx
В.	What date and approximate time did the events giving rise to your claim(s) occur? Monday June 13th 2011. @ 10:am
C.  ppened pou?  to did ai?	Facts: I was accused of injuring a client named Richard Vasquez. I have have proof that of did not injure any client. My employer ctar terminated me on terms that of failed to call my supervisor about this situation and said of failed to pull away from the incident as well. I have evidence that will prove these allegations false. Union refused evidence with statements that constradicted witness Stephanic Gomez's false accusations. Union attorney did not question allegations by witness Stephanic Gomez and did not accept evidence of presented to him to fight
o else what pened?	corrupt. There were no investigation of my case that was in good faith. (See notes).
IV. If y if a	Injuries:  ou sustained injuries related to the events alleged above, describe them and state what medical treatment, ny, you required and received.
	emotional distress

seeking, a	nd the basis for	such compensation.	back	pay	fron-	- pay	and
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I declare n	nder nenalty o	of perjury that the fore	anina is true	and corr	not		
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RE: Case #13 300 02617 11

#### American Arbitration Association

In the Matter of Arbitration

-between-

Rashaad D. Guerrero

FJC Security Services Inc.

(Employer; Hospital)

-and-

Local 32 BJ, SEIU

(Union)

APPEARANCES

#### For the Employer

Scott A. Weiss, Esq., Attorney
Laurie Malloy, Senior Director, OPS,HR Administration
Woofa Amoako, Supervisor
Stephanie Gomez, Security Guard

### For the Union

Raul Garcia, Esq., Attorney Rashaad Guerrero, Grievant

BEFORE: STEPHEN M. BLUTH, ARBITRATOR

#### BACKGROUND

This grievance protests the decision of FJC Security Services Inc.(Employer) to discharge Rashaad Guerrero (Grievant). The Employer claims it had just cause to dismiss Grievant. Local 32 BJ, SEIU (Union) insists the Employer's claim is devoid of merit. It asks he be reinstated with full back pay and benefits.

The essential facts of this matter are not in dispute. At the time of his discharge Grievant was employed as a security guard assigned to a Human Resources Administration (HRA) location at 260 East 161<sup>st</sup> Street, Bronx, N.Y. On or about July 11, 2011, he was advised his employment was being terminated due to a physical altercation with a client at HRA (Joint Ex. 3). Thereafter, the Union filed a grievance on his behalf. Efforts to resolve the matter were not successful. Consequently, I was selected to hear and decide the dispute.

A hearing was held on March 21, 2012. At this hearing both parties were afforded full opportunity to adduce evidence, make oral argument and otherwise support their respective positions. Both made oral

closing statements, whereupon I closed the record.

This Opinion and Award follows.

#### ISSUE

At the hearing the parties stipulated to the following issue:

Did FJC Security have just cause to dischargeGrievant; if not, what is the appropriate remedy?

### POSITIONS OF THE PARTIES

The Employer contends it had just cause discharge Grievant because he was involved in a physical altercation with an HRA client on June 13, 2011. To support this claim, it cites the testimony of Security Guard Stephanie Gomez, who averred witnessed Grievant arguing with a client. Further, the Employer asserts, Gomez explained she subsequently saw both Grievant and client cursing and swinging at one another. According to Gomez, other parties had to separate them. Thereafter, Grievant walked away from the client, who decided to chase after him. As a result, Grievant grabbed him in the neck area and threw him against the wall, according to Gomez.

Moreover, the Employer advises, as a result of this altercation the client sustained injuries. To

buttress this claim, it refers to the testimony of Grievant's supervisor, Woofa Amoako, that when he arrived at the scene, the client claimed he was in pain. Consequently, the supervisor called the EMS, which subsequently transported him to a hospital.

Additionally, the Employer reports, it provided Grievant with extensive training in how to handle physical confrontations with clients. It cites the testimony of HRA Senior Director Laurie Malloy that Grievant completed the requisite thirty-five hour FJC/HRA pre-assignment training course. The Employer points to a certificate issued to him on August 6, 2005 that indicates he had done so (Joint Ex. 4). Additionally, according to Malloy, Grievant provided with a "Justification of Defense" memorandum that outlined how and when physical force could be used (Joint Ex. 2). Therefore, the Employer explains Grievant was well trained on how to handle situations such as that in the instant matter. In spite of that training, it stresses, he ignored protocols engaged in a physical confrontation with a client in violation of its rules. Thus, the Employer concludes, qiven the training he received there is no excuse for

Grievant's behavior on June 13, 2011. Accordingly, it asks the grievance be dismissed.

The Union insists the Employer did not have just cause to discharge Grievant. To support this claim it cites his description of the events that transpired on the day in question. The Union avers on that day a client, Richard Vasquez, became embroiled in argument with another client as to position on line. This occurred, it explains, because the client with a "referral" arrived at the line and took a place in front of Vasquez as was appropriate protocol. As a result, Vasquez became loud and irate and approached the other client until they were "nose to nose." According to the Union, Grievant attempted to separate both men, who, by that time, were wrestling on the ground. However, Grievant successfully separated them, it reports. Thereafter Vasquez ran towards Grievant, who attempted to restrain him by placing him in a bear According to the Union, Grievant followed appropriate protocol and at no time did he swing or curse at Vasquez. In sum, the Union maintains, the only action in which he engaged was taken to protect himself and other clients. Further, the Union argues, at the hearing Grievant's account of the incident was

both accurate and credible. Therefore, it insists the Employer did not have just cause to terminate his employment. For that reason, it asks he be reinstated with full back pay and benefits.

#### DISCUSSION AND FINDINGS

I have examined the testimony in this matter. Based on my review, I determine the Employer had just cause to discharge Grievant. This is so, I find, because Security Guard Stephanie Gomez, the only eyewitness to the events that transpired on June 13, 2011, credibly testified she saw Grievant and Vazquez engaged in an argument. According to her testimony, she heard both Grievant and client cursing at one another. Moreover, Gomez averred, she observed both men swinging at each other while others around them attempted to separate them. Thereafter, Grievant walked away from the client, who pursued and rushed towards him. At that point, Gomez related, Grievant grabbed the client in the neck area and pushed him against the wall. Soon thereafter, Supervisor Amoako arrived and took charge of the client. Gomez's testimony was clear, consistent and credible, in my opinion.

Also, Amoako, who arrived at the scene some minutes after the altercation, substantiated Gomez's version, in part. According to him, when he arrived Vasquez complained he was in pain, which led Amaoko to call the EMS and have the client taken to the hospital. Amaoko's testimony is consistent with that of Gomez, when she asserted she witnessed Grievant grab Vasquez in the neck area and push him against the wall.

Finally, I determine, Grievant did not properly handle the situation in spite of the significant training he was provided. According to Laurie Malloy of Human Resources, Grievant received five days of training with regard to confrontations with clients and the use of physical force. Further, she declared, the police department conducted monthly training that included how to handle difficult situations. Given this training, Grievant should not have made any physical contact with the client, as instructed by the material provided him at the general training session (Empl.Ex.1). That training also emphasized projecting a calm professional manner and defusing difficult situations. Grievant's actions on June 13, 2011, were not consistent with these instructions, I believe. As

a result, he exacerbated the problem at hand rather than helping to resolve it. Accordingly, based on the credible evidence adduced at the hearing, I find the Employer had just cause to discharge Grievant. As a result, the grievance is dismissed in its entirety. It is so ordered.

#### AWARD

The Employer had just cause to discharge Grievant. The grievance is dismissed in its entirety.

Dated: 4/2/12

STEPHEN M. BLUTH, ARBITRATOR

STATE OF NEW YORK)

COUNTY OF NASSAU )

I, Stephen M. Bluth, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Dated: 4/20/12

STEPHEN M. BLUTH, ARBITRATOR

### LOCAL 32BJ SEIU, AFL-CIO (FJC SECURITY SERVICES) Case 02-CB-081553

#### Confidential Witness Affidavit

#### I, Rashaad Guerrero, being first duly sworn upon my oath, state as follows:

I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 1 Metropolitan Oval Apt 11F, Bronx, NY 10462-6535

My telephone number (including area code) is:

646-351-9897

I was employed by:

FJC Security Services

located at

9

33 -10 Queens Blvd 3<sup>rd</sup> Floor Long Island City, NY 11101

1 I was employed by FJC Security Services, hereinafter, the Employer, as a security guard 2 from May 15, 2006 until June 22, 2011. My job duties were to guard the floor, direct individuals to buildings, and prevent and/or diffuse verbal or physical altercations. My supervisor at that 3 location was Wolfa Amoaken. During my employment, the Employer assigned me to work at 4 different buildings. Prior to my termination, I was assigned to work at 260 E. 161<sup>st</sup> Street at the 5 6 Melrose Job Center. 7 I have been a member of Local 32BJ SEIU, AFL-CIO, hereinafter the union, since in or about February 2009. I have never been elected or appointed to any positions within the union. I 8

Privacy Act Statement

The NLRB is asking you for the information on this form on the authority of the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the NLRB in processing representation and/or unfair labor practice cases and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). Additional information about these uses is available at the NLRB website, <a href="https://www.nlrb.gov">www.nlrb.gov</a>. Providing this information to the NLRB is voluntary. However, if you do not provide the information, the NLRB may refuse to continue processing an unfair labor practice or representation case, or may issue you a subpoena and seek enforcement of the subpoena in federal court.

attended union meetings every other Saturday from May 2009 until my termination.

Case 02-CB-081553 5/29/2012

1 On or about December 21, 2008, my Employer terminated me. My Employer accused me of spreading rumors about an account manager named Miss Wells. The Employer accused 2 3 me of stating that Miss Wells was sexually involved with a police officer. I denied spreading that rumor. In or about January 2009, I contacted the Union, and told them about my 4 termination. The Union contacted my Employer and negotiated for me to return to work. 5 However, I had to sign off on a final warning agreement. It stated that if I was to get into any 6 7 other kind of problem, I would be terminated. I was reinstated in or about May 2009. 8 Once I returned to work in May 2009, I felt that the Employer began retaliating against 9 me. In or about April 2010, the Employer suspended me for one day for allegedly drinking 10 alcohol while I was in the restroom. I filed a grievance with the Union. The Union refused to process my grievance to arbitration stating that it was only one day's worth of lost wages. In or about May 2011, I received a write-up because I was late to work. I was late because I was meeting with the Union. I filed a grievance with the Union, but the Union refused to process the grievance. The Union told me not to worry about it. On or about June 13, 2011, in the morning, there was an altercation between two customers, names unknown, at the Melrose Job Center. One customer, referred to as customer #1, believed that another customer, referred to as customer #2, skipped the line, and began cursing at him. I heard the yelling and approached the customers. I approached customer #1 who was yelling. I attempted to explain to customer #1 that customer #2 had already been in line and did not need to wait in line again. Customer #1 began yelling at me. I told him to calm down. He then said to me "You are going to let him skip me like that? You are a fake cop." I again told customer #1 he had to calm down.

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Case 02-CB-081553 5/29/2012

At this time, customer #1 walked up right next to me and asked me to go outside and 1 fight. I then called my supervisor. Customer #1 began arguing with another customer, who I 2 3 will refer to as customer #3. It started as a verbal argument and then turned into a physical 4 argument between customer #1 and customer #3. During this incident, Security Guard, Roshel Graham appeared and asked customer #1 to calm down. Customer #1 pushed her then attacked 5 6 me. I was able to grab him and place him in a bear hug. 7 Additionally, Security Guard, Stephanie Gomez and Human Resources Administration workers appeared on the scene. Once I had secured customer #1, Graham, Gomez, and the HRA 8 9 workers escorted customer #1 out of the area. Subsequently, my Supervisor, Amoaken appeared at the scene and I told him what happened. Amoaken ordered me and Graham to go to the FJC 10 11 office and write a report. While there, I told the HRA police officer what had happened during 12 the incident. After I finished my report, I returned to work. A week and a half later, on or about Wednesday June 22, 2011, at the end of my shift, 13 Amoaken told me that I had to report to the FJC headquarters the following day. 14 On or about, Thursday June 23, 2011, I reported to headquarters. I met with the Assistant 15 Director Darryl Johnson. He escorted me to the office of Senior Director of FJC, Lory Malloy. 16 Malloy asked me to explain what happened the day of the incident, June 13th. I told her what 17 happened. She told me that I was a liability. I replied that I wasn't and I didn't do anything I 18 19 wasn't supposed to do. The conversation with Malloy ended. At that point, Johnson escorted me out of her office and told me that I was suspended indefinitely. He told me that he would give me 20 a call after the investigation. 21 22 That same day I went to the Union's office and filed a grievance. While there I spoke 23 and met with Lashawn Henry, the Grievance Representative. Henry called Malloy and put her

Case 02-CB-081553 5/29/2012 on speaker phone. Malloy stated who told her that I could not return to work until the 1 investigation was completed. Henry told me that I needed to wait for the investigation to be 2 3 completed and the Union would begin their own investigation. 4 On or about July 7, 2011, I called Johnson to get an update about the investigation. Johnson did not provide me with any update. He told me to wait for the investigation to be 5 6 completed. 7 On or about July 8 2011, I met with Henry at the Union office. While there, she called 8 Malloy and placed her on speaker phone. Henry asked Malloy for an update on the investigation. Malloy told Henry that she had credited Stephanie Gomez's report. Henry asked 9 10 what specifically was important. Malloy did not respond. Henry ended the converstation 11 indicating that she would call her later. 12 On or about July 11, 2011, I received a termination letter from my Employer. The 13 Employer accused me of hitting customer #1 during the altercation. I called Henry to tell her that I was terminated. She told me that the Union was going to do the best it could to fight the 14 15 termination. 16 I subsequently applied for unemployment, which was denied. On December 5, 2011, I 17 had my unemployment hearing. Graham and Amoaken testified on my behalf. I won my appeal 18 and received unemployment. On or about March 9, 2012, I went to my Union's office, at which time, I learned that my 19 20 arbitration was scheduled for March 21, 2012. 21 On or about March 15, 2012, I met with the Union's Attorney Raul Garcia to prepare for my arbitration hearing at his office located at 25 W. 18th Street. Present during this meeting was 22 Kyle Jigetts, my friend. When I first walked in, the first thing Garcia asked me was whether I hit 23

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1 customer #1. I explained that I never hit him. I explained that I had reports, witnesses, and statements that I wanted him to read over. I told him these were the same witnesses that were 2 3 subpoenaed at my unemployment hearing. I told him I wanted the same witnesses that were at my unemployment hearing. Garcia disregarded what I said by beginning to talk about the 4 5 arbitration, how they are, that I need to talk about what is relevant and that I need to listen to 6 him. I told him I thought it was important that he listens to what I have to say because he is 7 representing me. He said that we would get to that later. He said right now I need to listen about 8 how the arbitration hearing goes. I listened to what he said. After he finished, I said now that I 9 heard what you had to say, I want to know how my witnesses are going to play into the arbitration. He said that he knows about the arbitration and what is needed and that he will call 10 11 the witnesses. I asked him if he was going to call Graham and Amoaken because they were 12 there. He said that he would call Graham and Amoaken. I asked if he would subpoen athem 13 because I think they would be scared to come in. He told me that we didn't need to subpoena 14 them and they would just come in. I asked if he would have them come in and he answered yes. 15 The meeting ended. 16 On or about March 16, 2012, I called Garcia to see if he had spoken to Graham. Garcia told 17 me that he called Graham at work, but that she could not talk to him because she could get into trouble. 18 On or about March 19th, 2012 I called Garcia if everything was straight with Graham. Again, 19 20 Garcia said he could not get her on the phone because she was at work. I asked Garcia if he could set up an appointment for Graham to talk to him. He said that either Graham comes or she 21 doesn't and that she told him that she was at work when he called and cannot talk. Garcia said 22 now listen, if she does not show up, it will be me and you in there. I told him that it is important 23

Initials:

that she comes in. I said she is my witness and she needs to be here. I told him that he is my lawyer and that he is representing me. I asked Garcia had he told Graham about having job security and being protected as a Union's member. I told Garcia it was pertinent that she comes in for my case. Garcia replied again saying that it if she didn't come then it would just be me and him.

On or about March 21, 2012, I attended my arbitration hearing. I spoke to Garcia and asked him what I needed to say and what I needed to do. He asked me where my witnesses were. I replied that I thought it was his responsibility to have the witnesses come in. Further, I said that Graham isn't here and I am not sure what happened, but that she was not the kind of person to

case so she would be able to come. Garcia told me that we need to proceed with the arbitration
because it is just me and him. I saw Amoaken at the arbitration but he testified on behalf of the
Employer.

not show up because she was at the unemployment appeal hearing. I asked him to adjourn the

- After the conclusion of the arbitration, Garcia told me that I did good and that we would have to wait thirty days for a decision. I replied that I was not sure how good I did because he didn't have my witness here like you were supposed to. Garcia told me that I would get my answer in the mail and he would give me a call in 30 days.
- On or about April 16, 2012, I called Garcia. I asked him if there was a decision in the case.
- 19 He said no and he would get back to me.

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On or about April 24, 2012, I received a letter with the arbitrator's decision. I had lost the case.

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be

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shown to any person other than my attorney or other person representing me in this proceeding.

I have read this Confidential Witness Affidavit consisting of 10 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.

Date:	May 29, 2012	Signature:	W W	Rose	0	remis	
		-	R	lashaad Guer	rero		

Signed and sworn to before me on May 29, 2012 at

26 Federal Plaza, New York, New York 10278

NICOLE BUZZELLI

**Board Agent** 

**National Labor Relations Board** 

#### 46 USE OF FORCE

#### **Defense of Justification**

New York Penal Law

Section 35

#### 47 M IMPORTANT NOTE !!!!!!

- Security Officers, although according to NYS law may be justified in the use of force, may still be liable for being in violation of their respective employer's use of force policy.
- Security officers are reminded to familiarize themselves with their employer's policy and be guided by it.
- Security Officers have the same authority as a private citizen
- Security Officers have NO law enforcement authority
- Security Officers must understand legal justifications for use of force

#### 48 Definitions

- Physical Injury = Pain, or Temporary Disfigurement, or Impairment.
- Serious Physical Injury = Serious injury and/or a substantial Risk of Death.
- Physical Force = Force, Including Confinement without the consent of the person.
- Deadly Physical Force = Force that will knowingly create or purposely cause death or serious physical injury

### 49 Timminent Danger" Definition

- Threatened actions or outcomes that may occur during an encounter.
- Example: Threatened harm does not have to be instantaneous. It's a present danger continuing into the immediate future

### 50 Reckless Endangerment

- Disregard of a foreseeable likelihood that innocent persons will be endangered.
- Reasonable Belief
- More than a hunch, but less than proof beyond a reasonable doubt or absolute certainty.
- Does not mean a correct judgment.
- The belief may later be proven mistaken. What is important is that there existed a reasonable basis for the belief when force was used.

#### 51 THREAT ASSESMENT

- Before using force, the security officer must be able to assess the potential threat by determining;
- 1. What is the person saying?
- 2. What is the person doing?
- 3. Has the person taken a substantial step to carry out his/her intent?

4. Is the threat of force by the actor imminent or immediate?

#### "Reasonable Force" Definition

- Amount of force reasonably necessary to handle the situation.
- The force used should be proportional to the threat.

#### 53 FORCE OPTIONS

- Constructive Force
- Physical contact
- Physical force
- Mechanical Force
- Deadly Physical Force

#### 54 Constructive Force

- Does not involve actual physical contact with subject but, involves use of officer's authority to control subject.
- Examples: verbal commands, gestures, warnings

### 55 Physical Contact

Routine or procedural contact with subject necessary to effectively accomplish legitimate enforcement objective

#### Examples:

- quiding subject into vehicle,
- holding subject's arm while transporting, handcuffing subject

### 56 Physical Force

- Contact with subject beyond that generally utilized to effect arrest or other enforcement objective.
- Physical force is employed when necessary to overcome subject's physical resistance.
- Examples: wrestling resisting subject, wrist locks, striking with hands, feet

### 57 Mechanical Force

- Use of some device or substance to overcome subject's resistance.
- Examples: use of baton or other object, canine physical contact, or chemical or natural agent spraying

Note: The officer should be authorized & trained in using any mechanical force

## 58 Deadly Physical Force

- An amount of force that is likely to cause either serious physical injury or death to another person.
- Examples: firing a firearm in direction of another person, at vehicle, building in which person believed to be in.
- Note:
- Officer must be authorized & trained in using a firearm
- Deadly Physical Force is not limited to the use of a firearm or any other weapon
  - Example: Choke Hold, pen/pencil into a person's eye, Baseball Bat, tire iron, a

motor vehicle etc



# Use of Physical Force in defense of a person

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- Penal Law Section 35.15
- 1.A person may use physical force upon another person when and to the extent he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by such other person, unless:
  - a. The latter's conduct was provoked by the actor himself with intent to cause physical injury to another person or;
  - b. The actor was the initial aggressor; except that in such case his use of physical force is nevertheless justifiable if he has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the latter persists in continuing the incident by the use or threatened imminent use of applayful physical force.

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### 60 Use of Physical Force

### in defense of Premises and in defense of a person in the course of a Burglary

- Penal Law Section 35.20
- Any person may use physical force upon another person when he reasonably believes such to be necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission by such other person of a crime involving damage to premises.
  - a. May use deadly physical force if he reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of arson.

## 61 Use of Physical Force

### in defense of Premises and in defense of a person in the course of a Burglary

- Penal Law Section 35.20
- A person in possession or control of any premises, or a person licensed or privileged
  to be thereon or therein, may use physical force upon another person when he
  reasonably believes such to be necessary to prevent or terminate what he
  reasonably believes to be the commission or attempted commission by such person
  of a criminal trespass upon such premises.
- Deadly Physical Force to prevent or terminate
  - Arson, Attempted Arson
  - Burglary, Attempted Burglary

#### 62 Use of Physical Force

in making an arrest or in preventing an escape

- Penal Law Section 35.30
- When directed by a Police Officer or Peace Officer to assist.
  - When and to the extent he reasonably believes such to be necessary to carry out such Police/Peace Officer's direction.

## 63 Use of Physical Force

in making an arrest or

#### in preventing an escape

- Penal Law Section 35.30
- A private person acting on his own account may use physical force upon another
  person when and to the extent that he reasonably believes such to be necessary to
  effect an arrest or to prevent the escape from custody of a person whom he
  reasonably believes to have committed an offense and who in fact has committed
  such offense.

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HRA Police Operations

Robert Doar Commissioner

Thomas DePippo Senior Executive Deputy Commissioner

Dexter Freemin Assistant Deputy Commissioner

250 Church Street New York, NY 10013

212 274 5900

FJC Security Services, Inc.
33-10 Queens Boulevard, Suite 300

Long Island City, New York 11101

Mr. Davis

After reviewing the attached documentation, HRA Police Administration has determined that Security Officer Rashaad Guerrero should be removed from his current assignment at 260 East 161<sup>st</sup> Street, Bronx and banned from all HRA locations.

June 22, 2011

S/O Guerrero has engaged in conduct prejudicial to good order and discipline which interferes with security rules and regulations. On June 13, 2011, S/O Guerrero was involved in a verbal altercation with a client which became physical. The client sustained significant injuries and had to be taken to the local hospital for treatment. Although S/O Guerrero was instructed to remove himself from confrontations that could become physical and to call his Supervisor, he failed to do either.

Effective today June 22, 2011, S/O Guerrero must be removed from his current assignment and banned from all HRA facilities.

Inspector Joseph Sitro

### HUMAN RESOURCES ADMINISTRATION HRA POLICE OPERATIONS GUARD TRANSFER / BAN FORM



HRA Police Operations 250 Church Street New York, New York 10013

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Attach at associated gui Requests can not be pro	cessed without attached guard c	omplaint forms. If necessary, attach com	MING IG ON	en acciden	nai page.	
Recommendation:	TRANSFER BAN	Guard Complaint Forms Attached:	YES		NO	
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a. Name LOCAL 32BJ SEIU, AFL-CIO	b.	Union Rep	resent	ative to C	contact			
c. Address 25 W 18TH ST, NEW YORK, NY 10011-4676			(2	Tel. No. 212)388-3		e.Cell f		
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RASHAAD GÜERRERO			(646)351-9897					
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11. Address of party filing charge (street, city, state, and	ZIP code)							
1 METROPOLITAN OVAL, APT 11F, BRONX								
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WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

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HRA

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PAGE 05/06



Monday June 13th 2011

reception floor. I was where the clients first enter the floor. I directed all clients to the :ppropriate line to get a ticket. I was directing clients when a client came through the door with a referral. I was told that clients with referrals are to get a ticket directly at the window. I turned to see what was the loud arguement. It was the client I sent to the window, telling the client on like that he has a referral and that he was told to got the window. The client on the window.

I went to see what was the problem.

I spoke with the client on the line. I explained that the client has a referral and he is to get a tracket without making the line, as per the supervisor behind the windows at the main reception desk.

ate of New York unty of New York

rom to before me this day of Sept 2011

Ropas Diteners

Koshaal Juenen

RICHARD B. MINOR
Notary Public, State of New York
Reg. No. 04MI6147382

Qualified in New York County



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HRA

PAGE 06/05

I told the client on the line to relix. He refused I told him if he is not going to could acoun I will call my supervisor. He said he do not give a fuck and he invited me outside to fight. I told him and he invited me outside to fight. I told him I don't want to fighthim, I just wan him to get a I don't want to fighthim, I just wan him to get a ticket & so he can be seen. He got in my face. I ticket & so he can be seen. He got in my face. I reket & so he can be seen.

The client was eager to fight me. I still refused to fight him. He continued to approach refused to fight him. He continued to approach nue the was in my face. I grabbed him to restrain him. I did not know if he would stor 15 wing at me him. I did not know if he would stor 15 wing at me or not. His hand came up. I held him against the wall, while some clients and HRA weikers tried to wall, while some clients and HRA weikers tried to restrain him also. I moved away. I went where restrain him also. I moved away. I went where the elevator were The client continued towards me the elevator were The client continued towards me the elevator were the back stairs were. I went hack area where the back stairs were. I went

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worn to before me this day of <u>SLOT</u> 20 ||

RICHARD B. MINOR
Notary Public, State of New York
Reg. No. 04MI6147382

Qualified in New York County 4
Commission Expires June 5, 20 14

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PAGE 81/81

[Print in black ink all area in bold letters.]	F
SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK	
[fill in name(s)] Plaintiff(s)/Petitioner(s) - against -  NYC HUMMN RESOURCES MEMINISTRATION;  FJC SECURITY SERVICES FNC:  [fill in name(s)] Defendant(s)/Respondent(s)  STATE OF NEW YORK COUNTY OF NEW YORK COUNTY OF NEW YORK DONNELL GUERRERO	Index Number  402238/11  AFFIDAVIT IN OPPOSITION FUC Security Services  Trc;  [your name], being duly
sworn, deposes and says:	
1. I am the plaintiff petitioner / defendant / respondent [circle this affidavit in opposition to the motion or petition by [name of par for an order [describe what the other party asked for] They for an order [fTC] Security Services Inc, Claim, greivance.	tyl DONNELL GUERRERCE
2. I believe the Court should deny the motion or petition becadenied. Explain any Exhibits (documents). Add more pages if new havis wrote a false report concerning the all client. The aftercation began at 10:15 am 2:35 am. Sgt Chavis and P.O. Radriguez Cher the aftercation was over. There was a false of the content of t	Hercation with nie and and was over about come on the scene s never a fight. I never
relled at the client. I only explained about	t the (HKA) policy to the

client. (TRA) policy is thought a client already was on the line, they
do not get back on the line because they received a referral to get
a ticket at the windown because where the client received the referral
that unit was unable to generate a ticket. This mentally disturbed
1 Individual (Richard Vasquez) had a physical interaction with
the other clients who helped to try to restrain him. One client injured
MIS thumb or hand as he tried to restrain the aggressive, mentally disturb
Client. 70 Graham, (AJOS) Charnelle Tate, (A-JOS) Beverly Miller and
another male client intervened to prevent this unstable client from
hitting me. The client who injured his thumb requested medical aftertion
at the (base) Security office on the 8th floor, He wanted we from
Supervisor Wota. He was told there was kno Arst aid kit
available. (Exibits)
A-HRA Sgt Chavis made false statements in his report. He didn't
arrive at the aftercotion when he was called. He airrived after
the altereation with P.O. Rodriguez.
B- False Report
5/0 Gomez stated that she did not see what happened at first.
Then, she made a false statement saying there were punches thrown
)-This is a true and accurate statement.
WHEREFORE, I respectfully request that this motion/petition be denied.
Sworn to before me on  No Roal Ocuenen
10Mday of September , 2002011 [sign your name in front of a Notary]
Notary Public Kashga'd D. Grevero  [print your name]
- flame has much

GITA LAVANI
Notery Public, State of New York
No. 01LA0210786
Custified in Kinge County
Commission Expires 08/31/2013



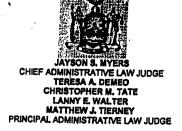
### HUMAN RESOURCES ADMINISTRATION HRA POLICE OPERATIONS SECURITY GUARD COMPLAINT FORM



return to: HRA Police Operations 250 Church St., 6<sup>th</sup> Floor New York, Now York 10013

Security Guard:	RASHAAD	GUERRERO	Social Secur	rity No.:	
		(print name)			
Employed By:	FJC Secur	rity Services			
		(name of security gua	ard vendor)	<del></del>	
Date of Infraction:	6/13/2011		Time:	1000HRS	
Location Name:	MELROSE	JOB CENTER 40	Address:	260 EAST 161 ST BRC	NX NY
Complainant:	SGT.CHA	VIS .	Phone No.:	718-664-1179	
CHECKLIST:					
☐ Unauthorize ☐ Failure to we ☐ Refusal to cool Insubordinat ☐ Conduct pre ☑ Conduct whi ☐ Involvement ☐ Unauthorize ☐ Lounging/sle ☐ Personal use ☐ Use of unau ☐ Other:	d absence for an arry out a distinction judicial to go ich prevents, with intoxical operation applies of Departmentorized equations.	ed uniform while on dub rect order and order and discipline finterferes with security ants, drugs, controlled s and/or use of Agency e on duty ment telephones	rules and regula substances while quipment s (TV, radio, nev		
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				SGT.CHAVIS	6/21/2011
Guard's S	Signature	Date	Comp	olainant's Signature	Date





# STATE OF NEW YORK UNEMPLOYMENT INSURANCE APPEAL BOARD ADMINISTRATIVE LAW JUDGE SECTION

59 Maiden Lane 31st Floor New York NY 10038-4644 (212) 238-2420 FAX:(212) 238-2451 BENJAMIN H, REYES
ANDREA S. ADDISON
SENIOR ADMINISTRATIVE LAW JUDGE

### DECISION AND NOTICE OF DECISION DECISIÓN Y AVISO DE LA DECISIÓN TOMADA

A.L.J. Case No. 011-31237 IN THE MATTER OF:

> RASHAAD GUERRERO 1 METROPOLITAN OVAL 11F BRONX NY 10462

FJC SECURITY SERVICES INC BARNETT ASSOCIATES PO BOX 7340 GARDEN CITY NY 11530

Mailed and Filed: December 8, 2011

CARDOZO LABOR & EMPLOYMENT CLINIC 55 FIFTH AVE NEW YORK NY 10003

JOSHUA E FINGOLD, ESQ. PO BOX 3098 NEW YORK NY 10163-3098

Department of Labor Office: 831

Hearing Requested: September 22, 2011

PLEASE TAKE NOTICE that this decision has been duly mailed on the date listed above. If you appeared at the hearing and are not satisfied with this decision, you may appeal within TWENTY DAYS from the date this decision was mailed. READ IMPORTANT INFORMATION ON REVERSE SIDE REGARDING YOUR RIGHT TO APPEAL. Any party who failed to appear at the hearing has the right to apply to reopen the case. For the application to be granted, the party must apply within a reasonable time and must establish good cause for its failure to appear.

POR FAVOR TOME NOTA: esta decisión ha sido debidamente enviada por correo en la fecha que aparece arriba. Si usted asistió a la audiencia y no está satisfecho con la decisión, puede apelar dentro de <u>VEINTE DIAS</u>contados a partir de la fecha en que esta decisión fue enviada por correo. <u>LEA LA INFORMACIÓN</u> IMPORTANTE AL REVERSO SOBRE SUS DERECHOS DE APELACIÓN. Cualquiera de las partes que falle en comparecer a la audiencia, tiene el derecho de solicitar que se reabra su caso. Para que dicha solicitud sea otorgada, la parte interesada debe solicitario dentro de un periodo de tiempo razonable y debe establecer buena causa por no haber comparecido a la audiencia.

DOCUMENTO IMPORTANTE. PUEDE OBTENER UNA TRADUCCIÓN DEL MISMO LLAMANDO AL 1-888-209-8124 (FUERA DEL ESTADO DE NUEVA YORK 1-877-258-5306)

ISSUES:

Loss of employment through misconduct.

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits effective June 23, 2011, on the basis that the claimant lost employment through misconduct in

A.L.J. Case No.011-31237

RASHAAD GUERRERO

Page 2

NOTICE OF DECISION

### **CLAIMANTS**

IF YOU DISAGREE WITH THIS DECISION, YOU HAVE A RIGHT TO APPEAL TO THE UNEMPLOYMENT INSURANCE: APPEAL BOARD.

Parties may be represented by lawyers or other persons of their choice on appeal to the Appeal Board. For representing a claimant, a lawyer or an agent registered by the Appeal Board may charge a fee. The fee must be approved by the Appeal Board before payment may be accepted by such lawyer or agent. No other person may charge a fee for representing a claimant. If you do not have enough money to hire a lawyer or registered agent, you may be able to get one free through your local Legal Aid Society or Legal Services Program.

### TO APPEAL A DECISION

- 1. Continue to follow all instructions from the Unemployment Insurance office where you originally filed your claim and to certify for benefits as long as you are unemployed and claiming benefits. This will protect your rights to any benefits you claim.
- 2. Within twenty (20) days of the date printed on the face of this decision, mail a letter to the office where you originally filed your claim or to the Appeal Board at P.O. Box 15126, Albany, New York 12212-5126, or fax your appeal to the Appeal Board at (518) 402-6208. Please state that you wish to appeal and the reasons for your appeal. Include your ALJ Case Number (found just above your name on the face of the Notice of Decision) and a copy of the Notice of Decision.
- 3. Claimants who appeal are <u>not</u> required to pay a deposit on filing an appeal.

### **EMPLOYERS**

If you wish to appeal this decision, you may file a notice of appeal within twenty (20) days from the date printed on the face of this decision to the office where the claim was originally filed and which issued the initial determination, or to the Unemployment Insurance Appeal Board at P.O. Box 15126, Albany, New York 12212-5126, or you may fax your notice of appeal to the Appeal Board at (518) 402-6208. Such notice of appeal should include the A.L.J. Case Number (found on the face of this Notice of Decision), the reason(s) for the appeal and a copy of the Notice of Decision.

ALL PARTIES WILL RECEIVE A NOTICE OF RECEIPT OF APPEAL DIRECTLY FROM THE APPEAL BOARD AFTER ANY APPEAL IS MADE.

### **INSTRUCCIONES A LOS RECLAMANTES**

### **RECLAMANTES**

SI NO EST" DE ACUERDO CON ESTA DECISIPN, USTED TIENE DERECHO DE APELARLA A LA JUNTA DE APELACIONES DEL SEGURO POR DESEMPLEO.

Las partes si lo desean, pueden estar representadas por abogados u otras personas que ellos seleccionen en la apelación a la Junta de Apelaciones (Appeal Board). Un abogado o un agente que esté registrado por la Junta de Apelaciones, puede cobrale honorarios por representarle. Estos honorarios deben ser aprobados por la Junta de Apelaciones antes que el pago pueda ser aceptado por dicho abogado o agente registrado. Ninguna otra persona podrá cobrar honorarios por representar al reclamante. Si usted no tiene suficiente dinero para contratar a un abogado o un agente registrado, puede conseguir uno gratis a través de la Sociedad de Asistencia Legal (Legal Ald Society) o el Programa de Servicios Legales (Legal Services Program).

### PARA APELAR LA DECISIPN

- Continte siguiendo todas las instrucciones de la oficina del Seguro por Desempleo (Unemployment Insurance) donde usted
  presentó su reclamo originalmente y para certificar por los beneficios mientras permanezca desempleado y esté reclamando
  beneficios. Esto protegerá su derecho a recibir cualquier beneficio que reclame.
- 2. Antes de cumplirse veinte (20) días de la fecha que aparece al frente de esta decisión, envie una carta a la oficina donde presentó originalmente su petición o al Appeal Board a P.O. Box 15126, Albany, New York 12212-5126, o envie por fax su apelación al Appeal Board al (518) 402-6208. Por favor, explique que desea apelar y las razones que tiene para hacerlo. Incluya su n‡mero de caso ALJ (lo encontrará justo encima de su nombre al frente de este Aviso de Decisión) y envie una copia de este Aviso de Decisión.
- 3. Los reclamantes no necesitan depositar dinero para poder apelar su caso.

TODAS LAS PARTES RECIBIR"N UN AVISO DE RECIBO DE APELACIPN DIRECTAMENTE DE LA JUNTA DE APELACIONES DESPU1S DE QUE SU PETICION SEA RECIBIDA.

A.L.J. Case No.011-31237

RASHAAD GUERRERO

Page 3

connection with that employment and holding that the wages paid to the claimant by the employer cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

A hearing was held at which testimony was taken. There were appearances by the claimant and on behalf of the employer.

FINDINGS OF FACT: Claimant was employed as a security officer for a security company until on or about June 22, 2011. The employer had a policy that prohibited fighting on the job. On June 13, 2011, claimant was assigned to work at a City of New York Human Resources office. On that day a client got into an argument while in line. He contended that someone jumped the line. When claimant interceded to diffuse the situation the client used a vulgarity towards the claimant. Claimant indicated that he would call a supervisor. Claimant left the area and the client followed and confronted him. Another person tried to restrain the client. The client challenged claimant to go outside. Claimant called a supervisor on a walkie talkie and advised of the situation. The supervisor indicated they were on their way. Another security officer, Graham, came on the scene. The client pushed her. The client came at claimant and shoved him. Claimant grabbed the client around the waist to subdue him, in accordance with claimant's training. Claimant had no other physical interaction with the client. Claimant was discharged from his employment on or about June 22, 2011, because the employer believed that he was fighting on the job. Claimant did not fight on the job on June 13, 2011.

OPINION: Pursuant to Labor Law § 593 (3), a claimant is disqualified from receiving benefits after having lost employment through misconduct in connection with that employment. Pursuant to Labor Law § 527, the wages paid in such employment cannot be used to establish a future claim for benefits.

The credible evidence establishes that claimant was discharged because the employer believed that he was fighting on the job. As claimant did not fight with the client but only attempted to subdue him by grabbing him around the waist in accordance with claimant's training, on the record before me, I find that claimant committed no act of misconduct that resulted in his discharge. In reaching this decision, I accept the testimony of the claimant as it is supported by the testimony of security officer, Graham. Accordingly, I conclude that claimant is not subject to the disqualification imposed.

DECISION: The initial determination, disqualifying the claimant from receiving benefits effective June 23, 2011, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by the employer cannot be used toward the establishment of a claim for benefits, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

/s/ Diane Dubiac

Administrative Law Judge

A.L.J. Case No.011-31237

### RASHAAD GUERRERO NOTICE OF DECISION

Page 4

### **CLAIMANTS**

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### TO APPEAL A DECISION

- Continue to follow all instructions from the Unemployment Insurance office where you originally filed your claim and to certify for benefits as long as you are unemployed and claiming benefits. This will protect your rights to any benefits you claim.
- Within twenty (20) days of the date printed on the face of this decision, mail a letter to the office where you originally filed your claim or to the Appeal Board at P.O. Box 15128, Albany, New York 12212-5128, or fax your appeal to the Appeal Board at (518) 402-8208. Please state that you wish to appeal and the reasons for your appeal. Include your ALJ Case Number (found 2. just above your name on the face of the Notice of Decision) and a copy of the Notice of Decision.
- Claimants who appeal are not required to pay a deposit on filing an appeal. 3.

If you wish to appeal this decision, you may file a notice of appeal within twenty (20) days from the date printed on the face of this decision to the office where the claim was originally filed and which issued the initial determination, or to the Unemployment Insurance Appeal Board at P.O. Box 15126, Albany, New York 12212-5128, or you may fax your notice of appeal to the Appeal Board at (518) 402-6208. Such notice of appeal should include the A.L.J. Case Number (found on the face of this Notice of Decision), the reason(s) for the appeal and a copy of the Notice of Decision.

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### PARA APELAR LA DECISIPN

Contin‡e sigulendo todas las instrucciones de la oficina del Seguro por Desempleo (Unemployment Insurance) donde usted presentó su reclamo originalmente y para certificar por los beneficios mientras permanezca desempleado y esté reclamando 1. beneficios. Esto protegerá su derecho a recibir cualquier beneficio que reclame.

Antes de cumplirse veinte (20) días de la fecha que aparece al frente de esta decisión, envíe una carta a la oficina donde presentó originalmente su petición o al Appeal Board a P.O. Box 15126, Albany, New York 12212-5128, o envíe por fax su apelación al Appeal Board al (518) 402-6208. Por favor, explique que desea apelar y las razones que tiene para hacerlo. 2. Incluya su n‡mero de caso ALJ (lo encontrará justo encima de su nombre al frente de este Aviso de Decisión) y envíe una copia de este Aviso de Decisión.

Los reclamantes no necesitan depositar dinero para poder apelar su caso.

DDAS LAS PARTES RECIBIR"N UN AVISO DE RECIBO DE APELACIPN DIRECTAMENTE DE LA NTA DE APELACIONES DESPU1S DE QUE SU PETICION SEA RECIBIDA.

# Case 1:12-cv-05763-SHS-RLE Document 12 Filed 10/01/12 Page 53 of 53

Southern district of New York 12 CV 05 763 (SHS), Rashard, Donnell Guerrero V. FJC security services, Inc., et, aL.

# AFFIRMATION OF Service

I, DONNELL GUErrero Declare Under penalty of persury that I served Defendants a copy of the Amended complaint by Mail.

U.S.DJ. Sidney Stein U.S. DISTrict Court For the southern District of New York, 500 Pearl St. Nyc 10007

Judith Padow, Esq. Sein, Local 32BJ. 25 W. 18th St. NYC 10011

Scott weis FJC 50 Main st. Suite 1000 white plains, NY 10606

DAte 10/1/2012 Kashan Don Plenen